

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JUDITH CARLOZZI,

Plaintiff,

-against-

TARGET CORPORATION,

Defendant.

-----X

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

DOCKET NO. JAN 20 2015 ★

LONG ISLAND OFFICE  
NOTICE OF REMOVAL

CV-15 0296  
WEXLER, J  
LINDSAY, M

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK:

Defendant, TARGET CORPORATION, ("Target"), by its attorneys, SIMMONS JANNACE DELUCA, LLP, Daniel R. Strecker, of counsel, upon information and belief, respectfully petitions the Court, pursuant to 28 U.S.C. § 1441, as follows:

1. On August 6, 2014, the above-captioned civil action was commenced and is now pending in the Supreme Court of the State of New York, County of Suffolk. A trial has not yet been had therein. A copy of the Summons and Complaint is annexed as Exhibit "A". Target has served an answer to plaintiff's Complaint. A copy of the Answer is annexed as Exhibit "B".

2. The action, which sounds in negligence, seeks monetary damages for injuries allegedly suffered by plaintiff, Judith Carlozzi, allegedly caused by Target.

3. The action involves a controversy between citizens of different states, in that: (a) plaintiff is a citizen of the State of New York; and (b) defendant is now, and was at the time the action was commenced, incorporated pursuant to the laws of the State of Minnesota with its principal place of business in Minnesota.

4. This action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332. There is complete diversity between defendant and plaintiff.

5. Upon information and belief, the amount in controversy exceeds \$75,000. This Notice of Removal is being filed due to plaintiff's refusal to stipulate to cap damages at \$75,000 on January 15, 2015.

6. Written notice of the filing of this Notice of Removal will be given to plaintiff promptly after the filing of this Notice.

7. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Court of the Supreme Court of the State of New York, County of Suffolk, promptly after the filing of this Notice.

8. Attached to this Notice, and by reference made a part hereof, are true and correct copies of all process and pleadings filed herein.

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**Exhibit A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

JUDITH CARLOZZI,

Index No. 15466/2014

Plaintiff(s).

**SUMMONS**

-against-

TARGET CORPORATION,

Defendant(s).

This basis of venue designated  
is:

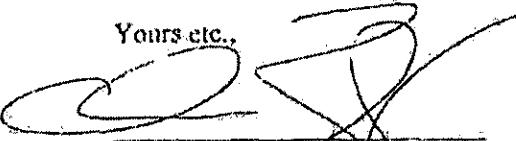
Plaintiff Resides in:  
Islip Terrace, New York  
County of Suffolk.

To the above named defendant(s):

YOU ARE HEREBY SUMMONED to Answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 4, 2014  
Islip Terrace, New York

Yours etc.,

  
Christopher G. Zachry, Esq.  
Law Office of Christopher G. Zachry, PC  
Attorney(s) for Plaintiff(s)  
71 Washington Avenue  
Islip Terrace, NY 11752  
(516) 848-0098

Defendant's Address:

838 Sunrise Highway  
Bay Shore, NY 11706

Note: The law provides that:

- (A) If this summons is served by its delivery to you personally within the State of New York, you must appear and answer within TWENTY (20) days after such service; or
- (B) If this summons is served by delivery to any person other than you personally, or is served outside the State of New York, or by publication, or by means other than personal delivery to you within the State of New York, you are allowed THIRTY (30) days after the proof of service thereof is filed with the Clerk of this Court within which to appear and answer;

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

x Index No. 15466/2014

JUDITH CARLOZZI,

Plaintiff,

- against -

VERIFIED COMPLAINT

TARGET CORPORATION,

Defendant.

x

PLAINTIFF, complaining of the DEFENDANT, by her attorney(s) LAW OFFICE OF CHRISTOPHER G. ZACHRY, PC, shows to the Court and alleges:

**AS AND FOR A FIRST CAUSE OF ACTION**

1. That at all times as stated herein, Plaintiff, JUDITH CARLOZZI, was and still is a resident of the County of Suffolk, State of New York.
2. That at all times stated herein, Defendant, TARGET CORPORATION, is a domestic corporation duly organized and doing business pursuant to the laws of the State of New York with a principal place of business designated in Suffolk County.
3. Defendant, TARGET CORPORATION, is a foreign business corporation doing business in and pursuant to the laws of the State of New York.
4. Defendant, TARGET CORPORATION, is a domestic limited liability company duly organized and doing business in the State of New York with its principal place of business designated in Suffolk County.
5. On and prior to August 9, 2011, Defendant, TARGET CORPORATION, was the owner of premises located at 838 Sunrise Highway, Bay Shore, New York 11706, herein referred to as "PREMISES".
6. On and prior to August 9, 2011, Defendant, TARGET CORPORATION, was

the lessee of the PREMISES.

7. On and prior to August 9, 2011, Defendant, TARGET CORPORATION, operated a business on the PREMISES.

8. On and prior to August 9, 2011, Defendant, TARGET CORPORATION, maintained the PREMISES.

9. On and prior to August 9, 2011, Defendant, TARGET CORPORATION, managed the PREMISES.

10. On and prior to August 9, 2011, Defendant, TARGET CORPORATION, controlled the PREMISES.

11. On and prior to August 9, 2011, Plaintiff, JUDITH CARLOZZI, was lawfully on the PREMISES.

12. On and prior to August 9, 2011, Plaintiff, JUDITH CARLOZZI, was caused to fall on said PREMISES.

13. On and prior to August 9, 2011, Plaintiff, JUDITH CARLOZZI, was violently precipitated to the ground of said PREMISES as a result of a defective, unsafe, hazardous and/or dangerous condition on the PREMISES.

14. As a result of the foregoing, Plaintiff, JUDITH CARLOZZI, was injured.

15. As a result of the foregoing, Plaintiff, JUDITH CARLOZZI, was seriously injured.

16. The aforementioned occurred as a result of the negligence, carelessness, and recklessness of the Defendant(s), their agents, servants, and or employees with regard to its ownership, operation, maintenance, management, control and repair of said PREMISES.

17. The limitations on liability set forth in CPLR Section 1601 do not apply.
18. The limitations on liability set forth in CPLR Section 1601 do not apply by reason of one or more of the exemptions set forth in CPLR Section 1602.
19. Pursuant to CPLR Section 1602(2)(iv) Defendant is liable for all of Plaintiff, JUDITH CARLOZZI's, damages, including but not limited to her non-economic loss irrespective of CPLR 1601 by reason of the fact that defendant owed plaintiff, JUDITH CARLOZZI, a non-delegable duty of care.
20. Pursuant to CPLR Section 1602(2)(iv) Defendant is liable for all of Plaintiff, JUDITH CARLOZZI's, damages, including but not limited to her non-economic loss, irrespective of CPLR Section 1601 by reason of the fact that Defendant is vicariously liable for the negligent acts and omissions of its agents and employees.
21. By reason of the foregoing, Defendants are liable for damages to plaintiff, JUDITH CARLOZZI, in a sum of money exceeding the jurisdictional limits of all lower Courts which would otherwise have jurisdiction in this matter.

WHEREFORE, Plaintiff demands judgment against the Defendant as stated herein, in such amount as exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, or such amount as may be determined by a Court and/or jury, together with the costs and disbursements of this action.

Dated: August 4, 2014  
Islip Terrace, New York

  
Christopher G. Zachry, Esq.  
Law Office of Christopher G. Zachry, PC  
Attorney(s) for Plaintiff(s)  
71 Washington Avenue  
Islip Terrace, NY 11752

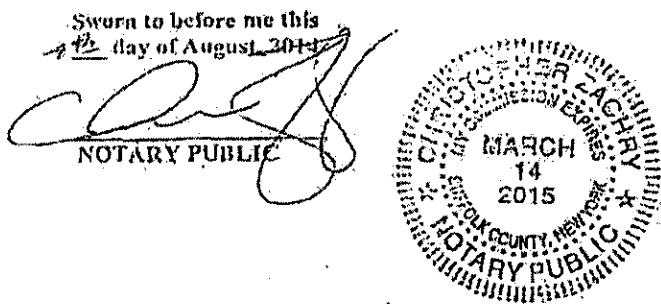
STATE OF NEW YORK )  
SS )  
COUNTY OF SUFFOLK )

**INDIVIDUAL VERIFICATION**

The undersigned, being duly sworn, deposes and says that the deponent is the Plaintiff in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

DATED: August 4, 2014  
Islip Terrace, New York

*Judith Carlozzi*  
JUDITH CARLOZZI



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**Exhibit B**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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JUDITH CARLOZZI,

INDEX NO.: 15466/2014

Plaintiffs,

**VERIFIED ANSWER**

-against-

TARGET CORPORATION,

Defendant.

-----X

Defendant, TARGET CORPORATION ("Target"), by its attorneys, SIMMONS JANNACE DELUCA, LLP, as and for its Verified Answer to the Verified Complaint of plaintiff, responds as follows:

**RESPONSE TO PLAINTIFF'S FIRST CAUSE OF ACTION**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "1" of the Verified Complaint.

2. Denies the allegations contained in numbered paragraph "2" of the Verified Complaint.

3. Denies in the form alleged the allegations contained in numbered paragraph "3" of the Verified Complaint and leaves all questions of law to the Court.

4. Denies the allegations contained in numbered paragraph "4" of the Verified Complaint.

5. Denies the allegations contained in numbered paragraph "5" of the Verified Complaint.

6. Denies the allegations contained in numbered paragraph "6" of the Verified Complaint except admits that Target leased a portion of the premises located at 838 Sunrise Highway, Bay Shore, New York 11706.

7. Denies the allegations contained in numbered paragraph "7" of the Verified Complaint except admits that Target operated a retail store on a portion of the premises located at 838 Sunrise Highway, Bay Shore, New York 11706.

8. Denies in the form alleged the allegations contained in numbered paragraph "8" of the Verified Complaint and leaves all questions of law to the Court.

9. Denies in the form alleged the allegations contained in numbered paragraph "9" of the Verified Complaint and leaves all questions of law to the Court.

10. Denies in the form alleged the allegations contained in numbered paragraph "10" of the Verified Complaint and leaves all questions of law to the Court.

11. Denies the allegations contained in numbered paragraph "11" of the Verified Complaint.

12. Denies the allegations contained in numbered paragraph "12" of the Verified Complaint.

13. Denies the allegations contained in numbered paragraph "13" of the Verified Complaint.

14. Denies the allegations contained in numbered paragraph "14" of the Verified Complaint.

15. Denies the allegations contained in numbered paragraph "15" of the Verified Complaint.

16. Denies the allegations contained in numbered paragraph "16" of the Verified Complaint.

17. Denies the allegations contained in numbered paragraph "17" of the Verified Complaint.

18. Denies the allegations contained in numbered paragraph "18" of the Verified Complaint.

19. Denies the allegations contained in numbered paragraph "19" of the Verified Complaint.

20. Denies the allegations contained in numbered paragraph "20" of the Verified Complaint.

21. Denies the allegations contained in numbered paragraph "21" of the Verified Complaint.

22. Denies plaintiff is entitled to the relief requested in the "WHEREFORE Clause."

23. Defendant demands that liability, if any, be apportioned.

**AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE**

1. Plaintiff's Complaint fails to state a cause of action.

**AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE**

2. Upon information and belief, the injuries allegedly sustained by plaintiff were not as a result of any culpable conduct by the defendant herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the culpable conduct of plaintiff, which contributed to or caused plaintiff's alleged injuries.

**AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE**

3. Upon information and belief, any damages sustained by plaintiff was/were caused, in whole or in part, by the culpable conduct of plaintiff and/or were aggravated by the culpable conduct of plaintiff.

**AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE**

4. If plaintiff proves at trial the existence of a dangerous condition, all of which is denied, upon information and belief, any damages sustained by plaintiff were caused by plaintiff having voluntarily and unreasonably assumed a known and dangerous risk, and/or the damages were caused by or aggravated by such conduct.

**AS AND FOR ITS FIFTH AFFIRMATIVE DEFENSE**

5. Answering defendant will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

**AS AND FOR ITS SIXTH AFFIRMATIVE DEFENSE**

6. Upon information and belief, defendant never received actual or constructive notice of any defective or dangerous condition, and therefore, it cannot be liable for any alleged injuries suffered by plaintiff.

**AS AND FOR ITS SEVENTH AFFIRMATIVE DEFENSE**

7. Upon information and belief, if plaintiff suffered any damages as alleged in the Verified Complaint, such damages were as a result of an independent superseding act by a third party for which defendant cannot be held liable, and defendant's conduct was in no way the proximate cause of such damages.

**AS AND FOR ITS EIGHTH AFFIRMATIVE DEFENSE**

8. If plaintiff suffered damages as alleged, then plaintiff failed to mitigate such damages.

**AS AND FOR ITS NINTH AFFIRMATIVE DEFENSE**

9. The alleged cause of action in negligence asserted by the plaintiff in the Complaint is barred in that the plaintiff failed to bring this action within three (3) years, as set forth in § 214 of the CPLR.

**AS AND FOR ITS TENTH AFFIRMATIVE DEFENSE**

10. If plaintiff herein has received remuneration and/or compensation for some or all of her claimed economic loss, or will with reasonable certainty receive remuneration and/or compensation for said loss in the future, defendant is entitled

to have plaintiff's award, if any, reduced by the amount of said remuneration and/or compensation, pursuant to Section 4545(c) of the CPLR.

**AS AND FOR ITS ELEVENTH AFFIRMATIVE DEFENSE**

11. Upon information and belief, plaintiff has not effectuated valid service, pursuant to CPLR § 306-b, and therefore, this Court lacks jurisdiction over the person of the defendant.

**WHEREFORE**, for all of the foregoing reasons, it is respectfully requested that plaintiff's Verified Complaint be dismissed in its entirety, and that defendant be awarded the costs and disbursements of this action, reasonable attorneys' fees and such other and further relief as this Court may deem just and proper.

Dated: Hauppauge, New York  
December 31, 2014

Simmons Jannace DeLuca, LLP  
Attorneys for Defendant

BY:   
Daniel R. Strecker

**Office & P.O. Address:**  
43 Corporate Drive  
Hauppauge, NY 11788-2048  
(631) 873-4888

TO: Christopher G. Zachry, Esq.  
Law Office of  
Christopher G. Zachry, PC  
**Office & P.O. Address:**  
71 Washington Avenue  
Islip Terrace, New York 11752  
(516) 848-0098

VERIFICATION

RE: Judith Carlozzi v. Target Corporation  
Index No.: 15466/14

I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state that I am the attorney of record for TARGET CORPORATION ("Target") in the within action. I have read the foregoing Verified Answer and know the contents thereof. The same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The reason this verification is made by me and not by Target is because Target has its principal place of business in another county.

The grounds for my belief as to all matters not stated upon my own knowledge are as follows: documents in my file and/or conversations with Target's representatives.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Hauppauge, New York  
December 31, 2014

  
DANIEL R. STRECKER

**AFFIDAVIT OF SERVICE  
U.S. MAIL**

**RE: Judith Carlozzi v. Target Corporation  
Index No.: 15466/2014**

STATE OF NEW YORK      )  
                              : ss.:  
COUNTY OF SUFFOLK      )

M. ALICE REBIMBAS, being duly sworn, deposes and says:

I am not a party to the within action, am over 18 years of age and reside at East Meadow, New York.

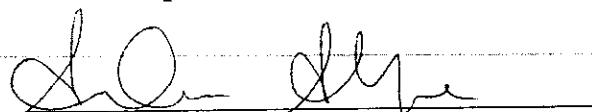
On December 31, 2014, I served the within **VERIFIED ANSWER**, by depositing true copies thereof, enclosed in post-paid wrappers, into the exclusive care and custody of the U.S. Postal Service within New York State, addressed as shown below:

TO:

Christopher G. Zachry, Esq.  
Law Office of  
Christopher G. Zachry, PC  
**Office & P.O. Address:**  
71 Washington Avenue  
Islip Terrace, New York 11752  
(516) 848-0098

  
M. ALICE REBIMBAS

Sworn to before me this  
31st day of December, 2014

  
NOTARY PUBLIC

ANALMA ALLEYNE  
Notary Public, State of New York  
No. 01AL6182441  
Qualified in Suffolk County  
My Commission Expires February 25, 2016